

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT PARKERSBURG

CONN FEAMSTER,  
SANDRA FEAMSTER,  
and JOHN DOES 1-25,

Plaintiffs,

vs.

CIVIL ACTION NO. 6:10-cv-00241  
JUDGE GOODWIN

HIGHMARK WEST VIRGINIA INC.  
d/b/a MOUNTAIN STATE BLUE CROSS  
& BLUE SHIELD, RELATIONAL  
MANAGEMENT SERVICES, LLC,  
SOLACIUM HOLDINGS, LLC,  
L. JAY MITCHELL, BART MITCHELL,  
CHERYL MITCHELL, and SHARON FINDLAY,

Defendants.

**MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANT HIGHMARK WEST  
VIRGINIA INC. TO DISMISS COUNTS III AND IV OF THE THIRD AMENDED  
COMPLAINT**

Defendant Highmark West Virginia Inc. ("Highmark WV") hereby requests that the Court dismiss Counts III and IV of the Third Amended Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

Defendants, Relational Management Services, LLC ("RMS"), L. Jay Mitchell, Bart Mitchell, Cheryl Mitchell and Sharon Findlay filed a motion to dismiss Counts III and IV of the Third Amended Complaint on April 25, 2011. Highmark WV hereby joins in the legal arguments made by RMS and the individual defendants and respectfully requests that Counts III and IV also be dismissed with respect to Highmark WV.

To the extent Plaintiffs have failed to state a claim upon which relief can be granted in Counts III and IV of their Third Amended Complaint, judgment in favor of Highmark WV is appropriate. Counts III and IV allege breaches of fiduciary duties with respect to ERISA Sections 502(a)(2) and (3), respectively. The legal infirmity of both counts, as fully addressed in the motion to dismiss filed by RMS and the individual defendants, requires dismissal of both counts with respect to all defendants named therein. Accordingly, Highmark WV adopts the arguments of RMS and the individual defendants as set forth in their motion to dismiss and respectfully requests both counts (and thus all counts against Highmark WV) be dismissed with prejudice.

WHEREFORE, Highmark WV respectfully requests that the Court dismiss Counts III and IV of the Third Amended Complaint and grant judgment in its favor.

/s/ Robert J. Kent

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

Jeffrey V. Mehalic

Roy F. Harmon, III.

Jan L. Fox

Sara E. Hauptfuehrer

Anna F. Ballard

J. A. Curia , III.

Erin Elizabeth Magee

/s/ Robert J. Kent

Robert J. Kent